

James David Jacobs  
Frank M. Gasparo  
Marcella Ballard  
BAKER & McKENZIE LLP  
1114 Avenue of the Americas  
New York, NY 10036-7703  
Tel: 212-626-4100  
Fax: 212-310-1600

Attorneys for Software AG, Inc.  
and Software AG

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SOFTWARE AG, INC. and SOFTWARE  
AG,

Plaintiffs,

-against-

CONSIST SOFTWARE SOLUTIONS,  
INC. f/k/a CONSIST INTERNATIONAL,  
INC. and NATALIO FRIDMAN,  
Defendants.

Case No. 08 CV 00389 (CM) (FM)

**NOTICE OF MOTION TO AMEND MOTION  
FOR PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that upon the Plaintiffs' Complaint, dated January 15, 2008; Plaintiffs' Order to Show Cause dated January 16, 2008 including the Memorandum of Law, and declarations of David M. MacSwain (dated January 15, 2008) and Karl-Heinz Streibich (dated January 15, 2008) and the attached exhibits thereto; The oral argument presented at the January 16, 2008 Hearing on Plaintiffs' TRO; Plaintiffs' Document Request (the "Request") served January 16, 2008; Defendants' production of documents on January 18, 2008 in response to the Request; the court's January 18, 2008 memo endorsed Order(s); the oral argument and testimony presented at the January 24, 2008 evidentiary hearing; the Findings of Fact and Conclusions of Law filed by Plaintiffs

on January 28, 2008; the court's February 1, 2008 Notice to Counsel (the "Notice"); and Plaintiffs' submission in response to the court's Notice, including the Memorandum of Law, declarations of James David Jacobs; Michael Fammler (German law); Esther Flesch (Brazilian law); Bernard Malone (Argentine law); Lucia Salaverry (Uruguay law) and the attached exhibits thereto; and the accompanying Declarations of Linda Kibblewhite and Frank M. Gasparo and the exhibits annexed thereto and upon the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Sanctions Pursuant to Fed. R. Civ. P. 37 submitted herewith, Software AG, Inc. ("SAGA") and Software AG ("SAG") (collectively "Plaintiffs" or "Software AG"), move this court to amend the proposed preliminary injunction for an Order granting a Preliminary Injunction be entered pursuant to Fed. R. Civ. P. 65(a) enjoining Defendants, their employees, their agents, their attorneys and all others acting in concert with them from:

(i) Representing or implying that Consist has continuing rights pursuant to the Agreement or that Defendants' rights under the Agreement may be or will be reinstated;

(ii) Offering or representing that Defendants can provide for SAG Software Products Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;

(iii) Representing, promoting, advertising, or implying that Plaintiffs have authorized or otherwise falsely designating that Plaintiffs have authorized Consist to provide maintenance services for SAG Software Products, including Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;

(iv) Asserting any rights in Software AG's intellectual property, including the trademarks ADABAS and NATURAL and SAG Software Products;

and ordering Defendants to:

(i) Assign over to Software AG all of the trademark registrations for Software AG's proprietary software products in the Territory; and

(ii) Include in any offers, advertisements, promotions or agreements to render to customers or potential customers maintenance services for SAG Software Products in type no less prominent in face and in size than the type in which offers or statements of service are made the disclaimer that "Software Ag Does Not Authorize Consist's Maintenance Services And In No Event Can Consist Provide Level 2 Support, Level 3 Support, Software Updates Or New Software Releases"

Dated: New York, New York  
February 13, 2008

Respectfully submitted,

By: /s James David Jacobs

James David Jacobs  
Frank M. Gasparo  
Marcella Ballard  
BAKER & McKENZIE LLP  
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New York, NY 10036  
Tel: 212-626-4100  
Fax: 212-310-1600

Attorneys for Plaintiffs Software AG, Inc.  
and Software AG